

Legal Maxims of *Ba'i* Ibn Al-Arabi's Contract and Their Relevance to Contemporary *Muamalah Maliah* Issues

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Abstract

The legal maxims of the *ba'i* contract are inductive Islamic legal reasoning, so their implementation has a static and dynamic character. Apart from al-Arabi, attention to two characters in one theme of *fiqh* (Islamic Jurisprudence) rules is rarely discussed by Islamic jurists. It is one of the reasons for the failure to dynamize the theory and practice of Islamic economic law, resulting in various criticisms. This research discussed the legal maxims of the *ba'i* contract of al-Arabi in *Al-Masalik fi Syarh Muwatta Malik* and their relevance to contemporary *muamalah maliah* issues to provide complete answers to various criticisms in contemporary Islamic legal theory and practice. The research method used normative Islamic law with a conceptual, philosophical, and historical approach. The data collection technique used a document study of Ibn al-Arabi's work "*Al-Masalik fi Syarh Muwatta Malik*" related to the *fiqh* rule on the *Ba'i* contract. The analysis technique was prescriptive analysis with logic and inductive legal reasoning. The research results show the ten *fiqh* rules of the *ba'i* contract developed by al-Arabi that have static characters, namely usury, *garar* or *jahalah*, consuming wealth in vanity, and deceit (*gasysi*).



Besides, those with dynamic characters are *urf*, emergency, and *maqasid al-syariah/sadd al-zariah*. The rule *fiqh* is relevant to contemporary *muamalah maliah* contract issues, such as cashback systems, dropship systems in online buying and selling, stock sales, pre-order systems, and electronic transactions (e-money). Therefore, these rules can be used as an *'illat* (ratio legis) for resolving problems in the contemporary *muamalah maliah* contract.

KEYWORDS *Ba'i; Contemporary; Ibnu al-Arabi; Legal Maxims; Muamalah.*

Abstrak

Kaidah fikih akad *ba'i* termasuk dalam nalar hukum Islam induktif, sehingga implementasinya memiliki karakter yang statis dan dinamis. Perhatian terhadap dua karakter dalam satu tema kaidah fikih jarang dibahas oleh fukaha, selain Ibnu al-Arabi. Inilah salah satu yang menjadikan kegagalan untuk mendinamiskan teori dan praktik hukum ekonomi Islam, sehingga muncul berbagai kritik. Penelitian ini membahas kaidah fikih akad *ba'i* Ibnu al-Arabi dalam Al-Masalik fi Syarh Muwatta Malik, dan relevansinya dengan persoalan *muamalah maliah* kontemporer dalam rangka melengkapi jawaban berbagai kritik dalam teori dan praktik hukum Islam kontemporer. Metode penelitian menggunakan hukum Islam normatif dengan pendekatan konseptual, filosofis dan historis. Teknik pengumpulan data menggunakan studi dokumen terhadap karya Ibnu al-Arabi, yakni Al-Masalik fi Syarh Muwatta Malik yang berkaitan dengan kaidah fikih akad *ba'i*. Teknik analisis menggunakan analisis preskriptif dengan logika dan penalaran hukum induktif. Penelitian ini menghasilkan temuan bahwa sepuluh kaidah *fiqh* akad *ba'i* yang dikembangkan al-Arabi yang bersifat statis adalah *riba*, *garar* atau *jahalah*, memakan harta dengan sia-sia, dan tipu muslihat (*gasysi*). Sedangkan yang bersifat dinamis adalah *urf*, darurat, dan *maqasid al-syariah/sadd al-zariah*. Kaidah *fiqh* tersebut relevan dengan permasalahan akad *muamalah maliah* masa kini, misalnya: sistem *cashback*, sistem *Dropship* dalam jual beli online, jual beli saham, sistem *pre-order*, dan transaksi elektronik (*e-money*). Oleh karena itu, sepuluh kaidah *Fiqh* al-Arabi dapat dijadikan *'illat* (rasio legis) untuk penyelesaian permasalahan dalam akad *muamalah maliah* kontemporer.

KATA KUNCI *Ba'i; Ibnu al-Arabi; Kaidah Fikih; Kontemporer; Muamalah.*

Introduction

Ten principles of *ba'i* contract in Islamic jurisprudence by Ibn al-Arabi (d. 543 H) were never carried out, especially by scholars of the Maliki school of thought who were more senior than him, such as Ibn al-Qassar (d. 397 H), Qadi Abu Bakr al-Baqilani (d. 403 H), Abu al-Walid al-Baji (d. 474 H), Muhammad bin Ali al-Marizi (d. 536 H).¹ Likewise, junior scholars were Al-Qurafi (d. 684 H), Ibn Jujay (d. 741 H), Qadi Aduddin al-Izi (d. 756 H), Abu Abdillah al-Tilmisani (d. 771 H), Abu Ishak al-Syatibi (d. 790 H), Muhammad Arafah al-Dasuki (d. 1230 H), Sheikh Muhammad al-Amir (d. 1232 H), and Sheikh Ahmad al-Syanqiti (d. 1434 H).² The creativity of Ibn al-Arabi is expressed in his works *Al-Masalik* and *Al-Qabas*, both of which are poems in the book *Al-Muwatta* by Imam Malik. Likewise, he concluded that the principles of *muamalah* sale and purchase contracts rely implicitly on four hadiths and two meanings. The four hadiths in question are hadiths about usury, hadiths about *ba'i salam*, hadiths about prohibiting buying and selling fruit before the fruit looks good, and hadiths about prohibiting the buyer from reselling food until he first receives it or holds it. While the intended meaning is *sadd al-zarai* and *maslahat*.^{3, 4}

However, in other works, such as *Ahkam al-Qur'an*, Ibn al-Arabi mentioned not only the rules of buying and selling contracts but also the rules of *muamalah*, which are built on four things, namely the verse about the prohibition of consuming wealth in vanity (Al-Baqarah: 188), the legality of buying and selling and the usury prohibition (Al-Baqarah: 275), hadiths about the *garar* prohibition, and expressions of *maqasid* and

¹ Ahmad Musadad, "Perniagaan Dalam Al-Qur'an (Studi Perbandingan Tafsir Ahkamul Quran Karya Ibnu Al-Arabi Dan Tafsir Ahkamul Quran Karya Al-Kiya Al-Harasi)," *Et-Tijarie: Jurnal Hukum Dan Bisnis Syariah* 3, no. 2 (2018), <https://doi.org/10.21107/ete.v3i2.3912>.

² Muh Fudhail Rahman, "Hakekat Dan Batasan-Batasan Gharar Dalam Transaksi Maliyah," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 5, no. 3 (2018): 255–78.

³ Qadi Abi Bakar Ibnu Al-Arabi, *Al-Masalik Fi Syarh Muwatta Malik* (Beirut-Libanon: Dar al-Garab al-Islami, n.d.), 17–18.

⁴ Abu Bakar Al-Arabi, *Kitab Al-Qabas Fi Syarh Muwatta Malik Bin Anas*, Cet-1 (Beirut-Libanon: Dar al-Garab al-Islami, 1992), 777, 779.

masalahah.⁵ In these two references (Al-Masalik and Al-Qabas), there are similarities regarding the usury and benefit prohibition. If in his work, Al-Masalik or Al-Qabas *masalahat* is mentioned as the primary meaning of the rules of the *ba'i* contract, but in other works, Ahkam al-Quran is mentioned as the *muamalah* rule.

Apart from the main points of *muamalah* related to buying and selling contracts or, in general, it is clear that it reveals an in-depth study of the ten principles of *fiqh* set forth in his work. There is no example of an explanation of the *garar* and *jahalah* terms and other terms. The ten principles play crucial roles, especially in the contemporary *muamalah* context. In this introduction, the examples put forward regarding the intended *garar* and *jahalah* are as follows:

First Rule, Every sale and purchase that is free from usury and evil, so actually, buying and selling is exchanging assets for assets.⁶ *Second Rule*, *Fasad* in buying and selling is due to three things, namely usury, *garar/jahalah*, and consuming wealth in a vanity way.⁷ *Eighth Rule*, The existence of ambiguity of the same type that causes breaking the sale and purchase of the case is the same as knowing that there is an excess.⁸

Ibn al-Arabi explained the *garar* definition with the expression "everything that is vague and hidden" (*Kullu amrin khafiyat wanthawa amruhu*). The purpose of the definition of *garar* put forward by Ibn al-Arabi seems to be that the term *jahalah* is included in the term *garar*. It is different from other Maliki scholars such as Al-Qurafi (d. 684 H), who stated that *garar* is something unknown, whether it can be obtained or not. For example, birds are flying in the air, and fish are in the pond. Meanwhile, *jahalah* is something that can be obtained but is vague in nature, for example, buying and selling carried out by blind people. He managed to get

⁵ Abu Bakar Ibn Al-Arabi, *Ahkam Al-Qur'an (1)* (Beirut-Libanon: Dar al-Kutub al-Ilmiah, n.d.), 137., hlm. 137.

⁶ Al-Arabi, *Al-Masalik Fi Syarh Muwatta Malik*, 23.

⁷ Al-Arabi, 23.

⁸ Al-Arabi, 23.

the item he had purchased, but he did not know the nature of the item, such as color and shape. Therefore, according to al-Qurafi, *garar* is more general than *jahalah*.⁹ Likewise, other Maliki scholars, such as al-Mazari (d. 536 H), argued that *garar* is something doubtful, whether safe or defective.^{10, 11} Other Maliki scholars, such as Ibn al-Hajib (d. 646 H), are almost similar to Ibn al-Arabi in defining *garar* with the expression "something that has ambiguity, is risky, and is difficult to hand over."¹² Ibn Arafah (d. 1230 H) defined *garar* with the expression "something that is doubtful in producing one of the two substitutes or reciprocity in a contract."¹³

There have been a number of previous studies related to Ibn al-Arabi. However, no research specifically deals with the theme of the *fiqh* principles of the *ba'i* contract put forward by Ibn al-Arabi. For example, research conducted by Salih bin Abdul Rahman al-Balihi, *Manhaj Ibnu al-Arabi fi Kitabih Ahkam al-Qur'an*.¹⁴ His research discussed Ibn Al-Arabi's study of the interpretation of legal verses through the science of *usul fiqh*. Likewise, he alluded to a number of verses included in the basics of *muamalah*, such as Surah Al-Baqarah: 188 and Surah Al-Baqarah: 275, in addition to hadiths about *garar* and *maqasid* considerations, *maslashedat*, and *urf*.

Another research was conducted by Muhammad Buqitayah titled *Manhaj al-Tarjih al-Fiqhi Inda Abi Bakar Ibnu al-Arabi Min Khilali Kitabih Al-Masalik fi Syarh al-Muwatta*.¹⁵ His research discussed the *tarjih* method used by Ibn al-Arabi in his work *al-Masalik*, both through agreed upon and debated propositions of Islamic jurisprudence. Another research was

⁹ Syihabudin Al-Qurafi, *Al-Furuq (3)*, Cet-1 (Beirut-Libanon: Beirut, Libanon : Muassasah al-Risalah, 2003), 403.

¹⁰ Syekh Ahmad Al-Syanqiti, *Mawahib Al-Jalil Min Adillati Khalil (3)* (Qatar: Qatar: Idaratu Ihya al-Turas al-Islami, 1986), 266.

¹¹ Muhammad Al-Zarqani, *Syarh Al-Zarqani Ala Muwatta Al-Imam Malik (3)* (Kairo-Mesir: Dar al-Hadis, 2015).

¹² Jamaludin Ibnu Al-Hajib, *Jami Al-Ummahat*, Cet-1 (Damaskus-Beirut: Al-Yamamah, 1989), 348.

¹³ Al-Zarqani, *Syarh Al-Zarqani Ala Muwatta Al-Imam Malik (3)*, 398.

¹⁴ Salih bin Abdul Rahman Al-Balihi, "Manhaj Ibnu Al-Arabi Fi Kitabih Ahkam Al-Qur'an" (Jamiah al-Imam Muhammad Saud al-Islamiah, 1983).

¹⁵ Muhammad Buqitayah, "Manhaj Al-Tarjih Al-Fiqhi Inda Abi Bakar Ibnu Al-Arabi Min Khilali Kitabih 'Al-Masalik Fi Syarh Al-Muwatta'" (n.d.).

conducted by Amin Badad titled *Al-Masail al-Fiqhiah Allati Khalafa Fiha al-Imam Abu Bakar bin al-Arabi Masyhur Mazhab al-Malikhiah Min Khilal Aridah al-Ahwazi Bisyarh Sahih al-Tirmizi (Kitab al-Taharah wa al-Anmuzajan prayer)*.¹⁶ His research discussed a number of disagreements between Ibn al-Arabi and Malikhiah scholars (such as al-Marizi, Ibn Arafah, and others) regarding the vivid discussion of taharah and prayer in his work "*Aridat al-Ahwazi Syarh Sahih al-Tirmizi*." Another research was conducted by Malik Barah, *Al-Fikr al-Maqasidi Inda al-Imam Abi Bakar al-Arabi*.¹⁷ His research discussed Ibn al-Arabi's thoughts on *maqasid al-shariah*, the flow of thought (legal propositions), features of thought (legal objectives), and the foundations of *maqasid al-shariah* thinking in the fields of worship, *muamalah*, and *uqubat*. Another research was conducted by Abdul Qadir Sultani titled "*Mazahir al-Tajdid al-Fiqhi Inda al-Qadi Abi Bakar Ibn al-Arabi*."¹⁸ His research discussed the implementation of *usul fiqh* principles, according to Ibn al-Arabi, in an effort to renew and maintain *maqasid al-shariah (ta'lil al-ahkam* in worship and *muamalah*).

In an effort to address the limitations of a number of studies, as already mentioned, this research seeks to integrate and synthesize previous studies. The object of this study is *Al-Masalik* and not other works by Ibn al-Arabi, such as *Al-Qabas* because the discussion of the principles of *fiqh akad ba'i* is equally discussed in both of his works. So, just choose one of them. Furthermore, the objectives to be achieved in this study are to find out the principles of *fiqh akad ba'i* put forward by Ibn al-Arabi in *Al-Masalik* and to find out the relevance of the principles of *fiqh akad ba'i* put forward by Ibn al-Arabi with contemporary *muamalah maliah* issues.

¹⁶ Amin Badad, "Al-Masail Al-Fiqhiah Allati Khalafa Fiha Al-Imam Abu Bakar Bin Al-Arabi Masyhur Mazhab Al-Malikhiah Min Khilal Aridah Al-Ahwazi Bisyarh Sahih Al-Tirmizi (Kitab Al-Taharah Wa Al-Salat Anmuzajan)" (Jamiah al-Jazair, 2014).

¹⁷ Malik Barah, "Al-Fikr Al-Maqasidi Inda Al-Imam Abi Bakar Al-Arabi" (Jamiah al-Batnah, 2017).

¹⁸ Abdul Qadir Sultani, "Mazahir Al-Tajdid Al-Fiqhi Inda Al-Qadi Abi Bakar Ibnu Al-Arabi" (Jamiah Doran Qism al-Ulum al-Islamiah, 2017).

Methods

This research can be categorized as normative Islamic law research because it makes the principles of Islamic law the object of research, such as *fiqh* rules. However, this study focuses on legal principles within the scope of the *fiqh* principles of the *ba'i* contract in “*Al-Masali*” by Ibn al-Arabi. This research approach is conceptual, philosophical, and historical.

The primary sources of this research are the works of Ibn al-Arabi, namely *Al-Masalik Syarh Muwatta Malik*, *Al-Qabas*, *Ahkam al-Qur'an*, *Aridat al-Ahwazi Syarh Sahih al-Tirmizi*,¹⁹ and *Al Mahsul*.²⁰ Moreover, they are coupled with the results of a review of previous research. On the other hand, the secondary sources are references to classical and contemporary Maliki scholars. Examples of the classical are *Mawahib al-Jalil* by al-Mazari (d. 536 H), *Jami' al-Ummahat* by Ibn Hajib (d. 646 H), *Al-Qawanin al-Fiqhiah* by Ibn Juzay (d. 741H),²¹ and *Syarh al-Zarqani Ala Muwatta al-Imam Malik* by Muhammad al-Zarqani (d. 1122 H). An example of the contemporary is *Ahkam Aqd al-Ba'i fi al-Fiqh al-Islami al-Maliki* by Muhammad Sakhal al-Mujaji.²²

The data collection technique was studying documents, namely data obtained from the data collection results in the form of primary and secondary data sources. Sugiyono said the documentation technique is the collection of documents from notes or someone's pre-existing work.²³ In this study, the collection of documents from *Al-Masalik* by Ibn al-Arabi violates the *fiqh* principles of the *ba'i* contract, plus other works. Therefore, the

¹⁹ Qadi Abi Bakar Ibnu Al-Arabi, *Aridat Al-Ahwazi Bisyar Sahih Al-Tirmizi (5)* (Beirut-Libanon: Dar al-Kutub al-Ilmiah, n.d.).

²⁰ Qadi Abi Bakar Ibnu Al-Arabi, *Al-Mahsul Fi Usul Al-Fiqh* (Dar al-Bayariq, 1999).

²¹ Ibnu Juzay, *Al-Qawanin Al-Fiqhiah*, n.d.

²² Al-Mujaji Muhammad Sukhal, “*Ahkam ‘Aqd Ba’i’ Fi Fiqh Al-Islamiy Al-Maliki*,” 2001.

²³ Sugiyono, *Metode Penelitian Kualitatif*, ed. Sofia Yustiyani Suryandari (Bandung: Bandung : Alfabeta, 2020), 124.

technical analysis of this research used prescriptive analysis with logic and inductive reasoning.

Discussion

Legal Maxims of the *Ba'i* Contract in the *Al-Masalik* Book

Ibn al-Arabi did not specifically define *fiqh* principles, as in his work "*Al-Masalik*." Ibn Manzur defined the rule according to language to mean *Al-Asāsu*, which is the basis or foundation. It is expressed in a sentence *Qowā'idul Baiti*. The meaning is *Asāsul Baiti*, which means the foundation of the house.^{24, 25, 26} On the other hand, the rules meaning in terms put forward by Ali al-Fyumi is "The rules according to the term have the same meaning as *dhabit* (Norm standards), namely universal law, which includes all of its parts."²⁷

The rule meaning put forward by al-Fayumi is the same as the meaning of *dhabit* (*Norm standards*), which means "universal law." However, some scholars distinguish between the two (rule and *dabit*), such as Tajudin al-Subki (d. 771 H) (a Shafi'ah scholar) and Ibn Nujaim (d. 970 H) (a Hanafiah scholar). The difference is that *fiqh* rules collect *fiqh* issues from various branches, while *dabit fiqh* collects them from certain *fiqh* chapter branches. Tajudin al-Subki mentioned, for example, in "*Al-Asybah wa al-Nazair*" rules related to *fiqh* issues that are not specific to a particular chapter, such as the rule "Faith does not disappear because of doubt". Moreover, examples of *dabit fiqh* cover certain chapters, such as *dabit* "Every kifarāt that is

²⁴ Ibnu Manzur, *Lisan Al-Arab* (Kairo: Kairo : Dar al-Maarif, n.d.), 3715.

²⁵ Ahmad Ali Al-Fayumi, *Al-Misbah Al-Munir Fi Garib Al-Syarh Al-Kabir* (Beirut-Libanon: Beirut, Libanon : Maktabah Libnan, 1987), 195.

²⁶ Syekh Abbas Ali Al-Sabzawari, *Al-Qawaid Al-Fiqhiah Fi Fiqh Al-Imamiah* (Qum-Iran: Qom-Iran : Muassasah al-Nasr al-Islami, 1430), 20.

²⁷ Al-Fayumi, *Al-Misbah Al-Munir Fi Garib Al-Syarh Al-Kabir*, 95.

caused by immoral acts, then the implementation must be immediate".²⁸ Likewise, Ibnu Nujaim mentions that the rule is to collect *fiqh* branches from various *fiqh* chapters in "Al-Asybah wa al-Nazair," while *dabit* only collects them from certain chapters.²⁹

Maliki scholars, such as al-Maqqari (d. 758 H), distinguished between *fiqh* rules and *dhabit*. According to him, the rules of *fiqh* are as follows: "Every universal law is more specific than the proposal, and all its meanings are more general than *dhabit fiqh*."³⁰ Implicitly Al-Maqqari said that rules and *dabit* have different meanings. *Fiqh* rules are more general in scope than *fiqh dhabit*. Rules of *fiqh* collect *fiqh* from various *fiqh* chapters, while *dabit fiqh* collects it from certain *fiqh* chapters. For example, as mentioned by Tajudin al-Subki.³¹

Apart from differences of opinion regarding the definition of *fiqh* rules and *fiqh dhabit*, here the researcher used the term *fiqh* rules because Ibn al-Arabi explicitly mentioned the term rules. Likewise, in several references to *fiqh* principles, there is a mix-up and inconsistency regarding the two terms. For example, al-Maqqari (Malikiyah scholar) mentioned in the title of his work the term "Al-Qawaid," but the majority of its contents are *dhabit fiqh*. Even Ibnu Rajab (d. 795 H) (a Hanabilah scholar) used the title in his work "Al-Qawaid," but its contents are all *dhabit fiqh*.³²

Furthermore, concerning the meaning of the word "ba'i," according to Ibn Manzur, it means selling,³³ in contrast to the word "al-syara," which

²⁸ Tajudin Al-Subki, *Al-Asybah Wa Al-Nazair* (1), Cet-1 (Beirut-Libanon: Ba'irut, Libanon : Dar al-Kutub al-Ilmiah, 1991), 11.

²⁹ Ibnu Nujaim, *Al-Asybah Wa Al-Nazair Ala Mazhab Abi Hanifah Al-Nu'mani*, Cet-1 (Beirut-Libanon: Dar al-Kutub al-Ilmiah, 1999), 137.

³⁰ Abi Abdillah Al-Maqqari, *Al-Qawaid* (Makkah al-Mukarramah: Makkah al-Mukarramah : Jamiah Umm al-Qura, n.d.), 150.

³¹ Andrizal Andrizal, Jumni Nelli, and Erman Gani, "KONSTRUKSI KAIDAH FIQHIIYAH AL-MASYAQQAH TAJLIBU AL-TAYSIIR DALAM MASALAH HUKUM SHOLAT JUM'AT DI TENGAH PANDEMI COVID-19," *Jotika Research in Business Law* 2, no. 1 (2023): 7–18.

³² H A Djazuli, *Kaidah-Kaidah Fikih* (Jakarta: Prenada Media, 2019). See too, Syamsul Anwar, "Teori Peningkatan Norma Dalam Usul Fikih," *Asy-Syyir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 50, no. 1 (2016): 141–67, <https://doi.org/https://doi.org/10.14421/ajish.v50i1.167>.

³³ Manzur, *Lisan Al-Arab*, 247.

means buying. Muhammad al-Zarqani (d. 1122 H) defined "*ba'i*" according to the meaning of exchanging (*al-mubadalah*).³⁴ Meanwhile, according to the terms of scholars, such as Ibn Arafah (a Malikiyah scholar), the word "buy" is defined by the expression "akad exchange of other than benefits, not including fun." This expression shows that buying and selling are different from renting and marriage. It is because the expression "besides benefits" means other than renting, and the expression "not having fun" means not marriage. Furthermore, regarding the *fiqh* principles of the *ba'i* contract, the following are put forward by Ibn al-Arabi:

First Rule, Every sale and purchase that is free from *riba* and *jahalah*, then actually buying and selling is exchanging assets for assets.³⁵ The rule explains that buying and selling must be free from usury and *jahalah*. Among the conditions, they must be clearly measurable. These sizes are divided into two types. The first is the size determined by sharia regarding *ribawi* assets. The second is the size agreed upon by both parties regarding all assets types (not only *ribawi* assets). Surah Al-Baqarah: 275 is generally concerned about valid and *fasid* buying and selling types. A valid sale and purchase is a sale and purchase that is protected from usury and *jahalah*. Ibn al-Arabi did not explain explicitly the difference between *jahalah* and *garar*. Even though both are important to explain, it can be identified which one has the potential to be a prohibited or permissible contract.

Second Rule, *Fasad* in buying and selling because of three things, namely usury, *gharar/jahalah*, and consuming wealth in vanity.³⁶ The rule explains the causes of damage to buying and selling because of three things, namely usury, *garar/jahalah*, and consuming wealth in a vanity way. Here, Ibn al-Arabi did not explain in detail the meaning of usury, *garar*, and *jahalah*. Furthermore, Ibn al-Arabi divided buying and selling into three types, namely the buying and selling that is permitted, prohibited, and

³⁴ Al-Zarqani, *Syarh Al-Zarqani Ala Muwatta Al-Imam Malik (3)*, 324.

³⁵ Al-Arabi, *Al-Masalik Fi Syarh Muwatta Malik*, 23.

³⁶ Al-Arabi, 23.

disallowed. Allowable buying and selling here means buying and selling is not explicitly prohibited by *syara'*. However, Ibn al-Arabi did not explain the definition of buying and selling, which is prohibited and disallowed. In contrast to the first rule, in this second rule, Ibn al-Arabi explicitly mentioned that the broken contract (*fasad*) is due to, among other things, *garar* and *jahalah*. However, Ibn al-Arabi did not go into detail about the *garar* and *jahalah*, which are meant to have the potential to cause the contract to be broken. Similarly, it does not differentiate between *fasad* and *batal*.

Third Rule, If in a transaction, gathering ribawi assets from two directions and both or one of them, there is something wrong in appearance, whether of the same type or difference, it is not permissible.³⁷ The meaning of these rules is the same as the two previous rules. In this third rule, Ibn al-Arabi also mentioned the rules about usury. Nevertheless, he mentioned four buying and selling types, namely *Ba'i al-Muzayadah*, *Ba'i al-Murabahah*, *Ba'i al-Istirsal*, and *Ba'i al-al-Mukayasah*. Syekh Ahmad al-Sanqiti (d. 1434 H), one of the Maliki scholars, explained that *Ba'i al-Muzayadah* was a seller in front of a crowd, showing his wares to prospective buyers at a certain price. Then, he would sell his goods if someone offered him above higher price.³⁸ *Ba'i al-Murabahah* is the sale and purchase of an object in which the purchase price and selling price are explained to the prospective buyer, and an agreement is made between the seller and the buyer regarding the selling price above the original price so that the seller earns a profit.³⁹ *Ba'i al-Istirsal* is buying and selling at an unknown price in the market.⁴⁰ *Ba'i al-Mukayasah* is buying and selling, in which there is a

³⁷ Al-Arabi, 23.,

³⁸ Azharsyah Ibrahim and Abdul Jalil Salam, "A Comparative Analysis of DSN-MUI Fatwas Regarding Murabahah Contract and the Real Context Application (A Study at Islamic Banking in Aceh)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 372–401, <https://doi.org/http://dx.doi.org/10.22373/sjhk.v5i1.8845>.

³⁹ Burhanuddin Al-Butary, "Konsep Murabahah Dalam Diktum Filsafat Ekonomi Islam," *HUMAN FALAH: Jurnal Ekonomi Dan Bisnis Islam* 8, no. 1 (2021).

⁴⁰ Sakiman Sakirman, "Contemporary Fiqh Methodology in the Theory of the Limitation of Dialectics Space and Time According to Muhammad Syahrur," *HUNAFa:*

demand for the buyer to lower the price, while the demand for the seller to increase it.⁴¹ This rule implicitly explains that the existence of equality of value in exchanging usury objects is a condition, so as not to fall into usury which is forbidden. However, Ibn al-Arabi did not explain the solution so that the exchange does not fall into usury, which is forbidden.

Fourth *Rule*, The existence of the same kind of ambiguity that causes damage to the sale and purchase of the case is the same as knowing the existence of excess.⁴² Likewise, as the previous rule, this rule is related to the rule of usury. According to Ibn al-Arabi, the existence of similarity in quality (*tamasul*) in buying and selling containing *ribawi* is a must in order to avoid usury. Also, according to him, the existence of usury causes damage to the contract (*fasad*). Concerning knowledge of the similarity in quality, it can be done through investigation or examination of *ribawi* items. It means the necessity of accuracy in determining whether something is included in *ribawi* goods or not. In this rule, Ibn al-Arabi explicitly mentioned the term *fasad* related to usury, just like the second rule. Here, there must be clarity regarding Ibn al-Arabi's thought regarding facade being associated with usury, not null and void. Likewise, there must be an explanation regarding the investigation of *ribawi* assets according to Ibn al-Arabi.

Fifth *Rule*, If someone buys goods at a price of one dinar, he can pay for them with the common currency in a country.⁴³ The purpose of these rules is to avoid the facade of buying and selling by someone who will exchange objects with the medium of exchange in the form of currency that is usually used in that country. This rule implicitly explains the need to pay attention to customs (*urf*) in a country regarding the applied exchange instruments. Ibn al-Arabi stressed the importance of *urf* related to the issue of the medium of exchange. Ibn al-Arabi also mentioned that Imam Malik

Jurnal Studia Islamika 14, no. 2 (2017): 301–26,
<https://doi.org/10.24239/jsi.v14i2.484.301-326>.

⁴¹ Al-Syanqiti, *Mawahib Al-Jalil Min Adillati Khalil* (3), 310.

⁴² Al-Arabi, *Al-Masalik Fi Syarh Muwatta Malik*, 23.

⁴³ Al-Arabi, 26.

was different from other scholars regarding his attitude towards *urf*. However, here, it is necessary to explain what type of *urf* was meant by Imam Malik because Ibn al-Arabi did not explain it.

Sixth Rule, A seller who hides defects in goods while the buyer does not know about it, then it is prohibited according to custom and *syara'*.⁴⁴ The purpose of this rule is to prohibit sellers from committing deceit or cheating (*gasyi*) by hiding defects in the goods they are going to sell. Meanwhile, the buyer did not know about the defect in the item. The law is prohibited, both based on custom and sharia. It will be a different case if the buyer knows it and agrees with it. This rule implicitly addresses customary concerns and requirements for the prohibition of deceit because it will harm the buyer financially. The expression of hiding defects in goods needs to be explained what is a suitable term for it. Ibn al-Arabi explicitly explained the term *gasyi* in the title of his convention, but he did not explain synonymous terms with the term *gasyi*, such as *gaban* and other terms. So are the differences between the terms.

Sevent Rule, Consideration of necessity in permissible something prohibited is the same as emergency considerations in justifying what is forbidden.⁴⁵ The purpose of this rule is the reason for the need (*hajat*) to occupy an emergency position. In such a position, something that is legally prohibited or forbidden becomes permissible. In this case, Ibn al-Arabi gave an example of excluding the prohibition of debts relating to the exchange of gold for gold by way of suspension. According to him, this opinion was put forward by Imam Malik, while other scholars did not allow it. However, the community agreed to allow him to be suspended without requiring a suspension. If it is permissible to separate (*tafarruq*) before the handover of goods is based on *ijmaat*, the delivery is postponed for a specific time, which is more perfect based on goodness and more lasting based on love. Likewise, it is excluded from the prohibition of *ba'i al-araya*, namely

⁴⁴ Al-Arabi, 26.

⁴⁵ Al-Arabi, 28.

someone buying young dates (*rutab*) that are still on the tree by means of an estimated payment of dry dates (*tamr*), which are measured. Ibnu al-Arabi did not explain that the community agreed to allow the suspension, whether it was based on necessity or *urf*. In other words, there is a mixture of exceptions for the two contracts (debts related to the exchange of gold for gold by deferred and *ba'i al-araya*) based on intent and *urf*.

Eight Rule, It is not permissible to buy or sell something unless the item is known.⁴⁶ The purpose of this rule is to prohibit *jahalah* on the object of goods because it contains the potential for financial loss for one of the parties. *Jalah* here can be related to the nature, type, or brand of the item. Knowing the nature of this item is a way of knowing the quality of the item. Therefore, explaining the nature of the goods is a must for the seller so that the buyer feels that he is not being harmed financially. Apart from that, it relies on the principles of benefit in order to reject narrowness and difficulties. However, Imam Malik allows buying and selling contracts based on only looking at the nature of the goods.⁴⁷ For example, the *ba'i al-barnamaj* contract, a sale and purchase agreement, relies on the characteristics written down in a notebook, due to an emergency. If appropriate, then the contract is customary. If not, the buyer is asked to choose between accepting and rejecting. Sheikh Muhammad al-Amir (d. 1232 H) explained that buying and selling is permissible by looking at some examples because sometimes the buyer may not be able to see the object of buying and selling when the contract is taking place. Therefore, it is permissible for him to buy goods based on the nature of the goods. Ibn al-Arabi did not explain the permissibility of *ba'i al-barnamaj* related to the permissibility of performing *khیار rukyat* because Imam Malik allows *khیار rukyat*. However, there are conditions, namely as long as the object of the

⁴⁶ Al-Arabi, 30.

⁴⁷ Ahmad Faruk and Moh Mahmud, "Analysis of Buying and Selling Practices Online in Islamic Law Perspective," *Jurnal Istiqro: Jurnal Hukum Islam, Ekonomi Dan Bisnis* 1, no. 6 (2020): 27–39, <https://doi.org/https://doi.org/10.30739/istiqro.v6i1.557>.

goods is not very far away, because if it is too far away, it causes the goods to change before the time of handover.

Ninth Rule, The Prophet Muhammad had forbidden to enter into sale and purchase agreements in thirty-seven forms.⁴⁸ The purpose of the rule is that thirty-seven forms of sale and purchase agreements are prohibited. The sale and purchase contract referred to is: 1) *ba'i al-garar*, 2) *ba'i al-mulamasah* (because of *garar*), 3) *ba'i al-munabazah* (because of *garar*), 4) *ba'i habl al-habalah* (because of *garar*), 5) *ba'i al-malaqih* (because of *garar*), 6) *ba'i al-madamin* (because of *garar*), 7) *ba'i al-hasa* (because of *garar*), 8) *ba'i al-sanaya* (because of usury), 9) *ba'i al-urbun* (because of *garar*), 10) *ba'i syartani fi ba'iin* (because of *garar*), 11) *ba'i ma laisa indaka* (because of *garar*), 12) *ba'iu samratin qabla an yabduwa salahuha* (because of *garar*), 13) *ba'i muzabanah* (because of *garar*), 14) *ba'i al-muhaqalah* (because of *garar*), 15) *ba'i al-mukhabarah* (because of *zaria*), 16) *ba'i al-muawamah* (because of *garar*), 17) *ba'i al-ratb bi al-tamr* (because of usury), 18) *ba'i al-karam bi al-zabib* (because of usury), 19) *ba'i al-ta'am qabla an yustaufa* (because of *garar*), 20) *ba'iun wa salafun* (because there are two opposite contracts), 21) *la tusarr al-ibil wa al-ganam* (because of *tadlis*), 22) *saman al-kalb* (because it can't be used), 23) *saman al-sanur* (because it can't be used), 24) *hulwan al-kahin* (because it eats wealth by vanity), 25) *yabiu present libadin* (because of deceit), 26) *ba'i al-najasy* (because of *garar*), 27) *ba'i al-rajul ala ba'i akhihi* (because of fading), 28) *ribhun ma lam yudman* (because of *garar*), 29) *al-tafriqah ba'ina al-umm wa waladiha* (because of the facade), 30) *Kirai al-ard* (because of *Zariah*), 31) *asb al-fahl* (because of *jahalah*), 32) *ba'i fadl al-mai* (because of fading), 33) *ba'i al-khamr* (because there is no benefit), 34) *ba'i al-maitah* (because it is unclean), 35) *ba'i al-dam* (because it is unclean), 36) *ba'i al-asnam* (because there is no benefit), and 37) *ba'i yaum al-jum' at* (for violating the rights of Allah).

⁴⁸ Al-Arabi, *Al-Masalik Fi Syarh Muwatta Malik*, 30.

Tenth Rule, Imam Malik pays attention to maqasid al-shariah related to the types of ribawi assets.⁴⁹ The meaning of this rule is that Imam Malik makes *illat* the prohibition of usury with regard to having a medium of exchange, staple food, the existence of different types and advantages (*tafadul*). However, Imam Malik excludes usury from the rules because it comes out of the purpose of buying and selling (*urf*), and the motive is generosity and nobility, like *Ba'i al-Araya*. Even though this rule implicitly mentions only sharia maqasidus, whose goal is to bring benefit, Ibn al-Arabi added it with *Zariah*. In this case, he means *Sadd al-Zarai* as stated in Al-Masalikand "Al-Qabas." It is closely related to the term *syubhat*, which means an expression about every act that resembles an unlawful law. Therefore, if it is ignored or not closed immediately, the path that leads to the damage will potentially cause sin. In other words, *sadd al-zarai* is closely related to every possible action that can lead to actions that are not permissible. Therefore, these actions must be closed or avoided.

Ibn al-Arabi further stated that *Sadd al-Zarai* included the main points of Islamic law, which were only recognized by Imam Malik. Besides that, Imam Malik also made maintenance of differences of opinion as one of the main points of Islamic law. However, the maintenance of these differences of opinion is inseparable from his attention to the Al-Qur'an, sunnah, and the people's consensus.

Likewise, Sheikh Ahmad al-Syanqiti (w. 1434 H) mentioned *sadd al-zarai* as the principal *fiqh* proposal of the Imam Malik bin Anas school. *Sadd al-zarai* said that what is forbidden by law is obligatory. Likewise, *fath al-zarai* for those who are obligated by law is obligatory. *Fath al-zarai* for those who are circumcised is circumcised. Moreover, *fath al-zarai* for those whose law is disapproved is *makruh*.⁵⁰

According to Ibn al-Arabi's verse concerning the prohibition for the children of Israel, they were forbidden to hunt fish on Saturdays (Surah Al-

⁴⁹ Al-Arabi, 48.

⁵⁰ Al-Syanqiti, *Mawahib Al-Jalil Min Adillati Khalil* (3), 282.

A'raf: 163), including the points of the stipulation of the law by *sadd al-zarai*. It contains the meaning of every act that is lawful and permissible but leads to what is prohibited. Therefore, this action must be avoided. However, they (the children of Israel) violated it, so after it was forbidden to fish on Saturday, they instead drank in the afternoon, and they continued to hunt fish until Sunday.⁵¹

Al-Subki explicitly stated that *Sadd al-Zariah* was well-known among the Maliki scholars. Similarly, al-Qurafi mentioned that laws based on *sadd al-zarai* could be considered as *ijma'*.⁵² Al-Qurafi himself mentioned that the definition of *sadd al-zariah* is determining attitudes to avoid paths potentially causing damage. In fact, al-Qurafi explicitly mentioned that *sadd al-zarai* is generally not only famous among the Maliki scholars but also among popular people.

Sadd al-zariah is divided into three types. The first is *zarai*, which relates to efforts to close the path that leads to damage. It is known as *sadd al-zariah*. In this case, the people have agreed. For example, digging a hole on the road potentially causes other people to fall into it. Therefore, it must be closed or put a sign explaining that it is a hole so that people should be careful. The second is *zarai*, which relates to efforts to pave the way so that other people can do it. It is known as *fath al-zariah*. Moreover, it is also the people who have agreed. For example, preventing others from planting grapes for fear of making *khamr* is forbidden. Even though it is not necessarily like that unless you are sure you will make *khamr*. The third is the *zaria*, which is debatable whether it should be closed or opened. For example, buying and selling on credit within a certain period (*ba'i al-ajal*), in which a person sells goods to another person for ten dirhams credited for a period of one month, then he buys them back at a price of five dirhams in less than a month. Imam Malik mentioned such a practice that, in fact, he has taken out of his hands as much as five dirhams at this time, and he takes

⁵¹ Al-Arabi, *Ahkam Al-Qur'an (1)*, 785.

⁵² Al-Subki, *Al-Asybah Wa Al-Nazair (1)*, 119.

ten dirhams at the end of the month. Moreover, it leads to the existence of debts of fifteen dirhams at a certain time, which brings closer to the road the form of a sale and purchase contract that contains usury.⁵³

Ibn Arafah al-Dasuqi (d. 1230 H) mentioned that *ba'i al-ajal* is legally permissible but can lead to what is prohibited, namely the gathering of buying and selling and debts or debts that can draw benefits that belong to usury. Therefore, Imam Malik forbade it for reasons of *sadd al-zariah*.⁵⁴

Ibn al-Arabi mentioned that the basic rules of buying and selling contracts pay attention to *maslahat*. That is every meaning regulated by Kanun (law) and contains benefits for the public. It is clear that Ibn al-Arabi interpreted the application of *maslahat* not only concerning a case that has no provisions in Islamic jurisprudence but also in the Kanun. It means that Ibn al-Arabi's way of thinking tries to combine the problems according to Islamic jurisprudence and Kanun. However, Ibn Arabi noted that the problems here do not arise because of the urge of lust but rather because of the benefits desired by Islamic jurisprudence and *Kanun*.⁵⁵

Regarding this *maslahah*, Imam Malik (as the *manhaj* followed by Ibn al-Arabi) and Imam Ahmad bin Hanbal gave room for *maslahah mursalah*, namely *maslahah*, which is in accordance with the objectives of Islamic jurisprudence. It is called *maslahah mursalah* because there is no specific argument on which to rely, but in general, it is not against Islamic jurisprudence. Unlike Imam Syafi'i, who gives a narrow movement to *maslahah mursalah*, it is enough to rely on *Qiyas* because every problem does not have a specific argument. However, Imam Syafii did not completely reject *maslahah*, but for him, any *maslahah* that does not have a text and does not contradict the text is returned to the *Qiyas*. It can be understood that Imam Syafi'i opened wide on any problems that did not have text in a

⁵³ Syihabudin Al-Qurafi, *Al-Furuq (2)*, Cet-1 (Beirut-Libanon: Beirut, Libanon: Muassasah al-Risalah, 2003), 61–62.

⁵⁴ Muhammad Arafah Al-Dasuqi, *Hasyiah Al-Dasuqi Ala Al-Syarh Al-Kabir (3)*, n.d., 76.

⁵⁵ Sulaiman bin Abdullah, *Al-Madkhal Ila Ilm Al-Fiqh*, Cet-1 (Riyad: Maktabah al-Malik Fahd al-Wataniah, 2006), 329.

qiyas way, not by opening wide with the *maslahah mursalah* or *istislah* way as the mindset of Imam Malik and *istihsan* as the mindset of Imam Abu Hanifah.⁵⁶

Imam Malik gave three conditions related to the enactment of this *maslahah mursalah*. First, the *maslahat* and *maqasid* do not contradict the *qat'i* argument. Second, the *maslahah* can be accepted by reason, which runs on characteristics in accordance with reason. Third, the *maslahat* is a solution to avoid difficulties.⁵⁷ Ibn al-Arabi said that only Imam Malik was the one who really opened up broad opportunities to solve the law through the *maslahat* *mursalah* and *maqasidus sharia* approaches. It aims to avoid losses. For example, *jahalah* is prohibited from buying and selling contracts.⁵⁸

If we conclude the *fiqh* principles of the *ba'i* contract, Ibn al-Arabi generally emphasizes the urgency of knowledge regarding the rules related to usury, *garar/jahalah*, consuming wealth in vanity, *urf*, *gasyi*, *hajat/emergency*, and *maqasid al-shariah* and *sadd al-zariah* in a *muamalah* contract.

Table 1. Character of Legal maxims of the *Ba'i* Contract

Legal maxims of the <i>Ba'i</i> Contract	Rule Themes	Character
Every sale and purchase that is free from <i>riba</i> and <i>jahalah</i> , then actually buying and selling is exchanging assets for assets.	Prohibition of usury and <i>jahalah/garar</i>	Static
Fasad in buying and selling because of three things, namely usury, <i>gharar/jahalah</i> , and consuming wealth in vanity.	Prohibition of usury, <i>garar/jahalah</i> , and consuming wealth in vanity	Static
If, in a transaction, gathering <i>ribawi</i> assets from two directions and both or one of them there is something wrong in appearance, whether of the same type or difference, it is not permissible.	Prohibition of usury	Static

⁵⁶ Abdullah, 259.

⁵⁷ Muhammad Abu Zahrah, *Usul Al-Fiqh* (Dar al-Fikr al-Arabi, n.d.), 279–80.

⁵⁸ Al-Arabi, *Al-Masalik Fi Syarh Muwatta Malik*, 22.

The existence of the same kind of ambiguity that causes damage to the sale and purchase of the case is the same as knowing the excess existence.	Prohibition of usury	Static
If someone buys goods at a price of one dinar, he can pay for them with the common currency of a country	The obligation to pay attention to the urf of a country	Dynamic
If a seller hides defects in goods while the buyer does not know about it, it is prohibited according to custom and syara'.	Prohibition of deceit or cheating (<i>gasyi</i>)	Static
Consideration of necessity in permissible something prohibited is the same as emergency considerations in justifying what is forbidden.	<i>Hajat</i> and <i>darurat</i>	Dynamic
Buying or selling something is not permissible unless the item is known.	Prohibition <i>jahalah/garar</i>	Static
The Prophet SAW had forbidden to enter into sale and purchase agreements in thirty-seven forms.	Various kinds of buying and selling are prohibited (majority because of <i>garar</i>).	Static
Imam Malik paid attention to <i>maqasid al-shariah</i> related to the types of ribawi assets.	<i>Maqasid al-syariah</i> and <i>sadd al-zariah</i>	Dynamic

Source: Research Results

The Table 1 shows that the first *fiqh* rule relates to usury and *garar/jahalah*; the second rule of *fiqh* relates to *garar/jahalah* and consuming wealth in a vanity way; the third *fiqh* rule regarding usury; the fourth rule relates to usury; the fifth *fiqh* rule relates to urf; the sixth *fiqh* rule relates to *gasyi*; the seventh *fiqh* rule relates to needs and emergencies; the eighth rule of *fiqh* relates to *jahalah/garar*; the ninth *fiqh* rule pertains to prohibited types of buying and selling (the majority are *garar*); and the tenth rule of *fiqh* concerns *maqasid al-syariah/sadd al-zariah*. The characteristics of the ten *fiqh* rules are generally divided into two, namely *fiqh* rules with static (sabbath) and dynamic (murunat) characteristics. Those with a static character are the *fiqh* rules regarding usury, *garar* or *jahalah*, consuming wealth in vanity, and deceit (*gasyi*). Meanwhile, those

with a dynamic character are *fiqh* rules regarding urf, necessity or emergency, and *maqasid al-syariah/sadd al-zariah*.

Philosophically the ten principles are an integral part to pay attention to related to the issue of *muamalah maliah*. The philosophical meaning of the rules regarding usury, which has a static character, has not experienced development from the past until now; the law is *haram*. The prohibition of usury so that humans have empathy for each other. The meaning of the philosophy of the rules about *garar/jahalah* has a static character, so neither the parties to the contract feel financially disadvantaged. However, the rule regarding *garar/jahalah* is not like the rule of usury, which is absolutely forbidden, because in the rule of *garar/jahalah*, there is *garar/jahalah*, which is permissible (forgivable). After all, it is difficult to avoid and reasons of necessity (*hajat*), such as buying and selling a house without looking at the foundation. Likewise, in the *garar/jahalah* rule, some things are forbidden because they are easy to avoid, such as buying and selling fish that are still in a pond. The philosophical meaning of the rules relates to urf with a dynamic character so that in *muamalah*, it pays attention to the dynamics of urf in society and the state, which is a characteristic of the flexibility of Islamic jurisprudence especially concerning contemporary *muamalah* issues.

The philosophical meaning of the rule relates to the prohibition of deceit (*gasyi*), which has a static character so that no party feels wronged when dealing with *maliah*. The philosophical meaning of the rules relates to necessity/emergencies, which are dynamic in character, so we are able to understand a number of *muamalah* contracts that are permitted for reasons of necessity that occupy an emergency position, such as buying and selling contracts and others. The meaning of the philosophy of the rules relates to types of buying and selling, which are prohibited in Islamic *fiqh* with a static character, so we are able to understand a number of reasons why the buying and selling contract is prohibited. In this case, Ibn al-Arabi mentioned thirty-seven forms of buying and selling contracts that are prohibited. The

majority of thirty-seven forms are prohibited because of *garar*. The meaning of the philosophy of the rules relates to *maqasid al-shariah* and *sadd al-zariah*, which are dynamic in character, so we are able to understand the purpose of syarak to allow or prohibit a number of contracts and the prohibition of syarak on a number of contracts for reasons of closing the road to actions that are forbidden (*sadd al-zariah*).

How is it relevant to contemporary *Muamalah Maliah* issues?

The majority of *muamalah* issues have developed (dynamic) as time goes on, such as the consent and acceptance practices and means of exchange.⁵⁹ In contrast to *muamalah* issues that are static or unaffected by the times, such as usury and *garar/jahalah*.⁶⁰ Regarding *garar* and *jahalah*, Ibn al-Arabi did not try to distinguish them because, in essence, the two are the same: that is, there is ambiguity that contains the potential for financial loss to one party.⁶¹ Likewise, Ibn al-Arabi did not differentiate between the terms *fasad* and *void* because in essence, both of them cause the contract to be uncontaminated and thus invalid.

In *muamalah* matters, such as *ijab* (offer) and *qabul* (acceptance), the role of *urf*, the times, and *maqasid al-shariah* are very influential. It goes against the second type of *muamalah* problem, such as usury.⁶² Nevertheless, through the ten principles of *fiqh akad ba'i*, Ibn al-Arabi tried

⁵⁹ Abdurrohman Kasdi, "Actualizations of Maqāṣid Al-Shariah In Modern Life; Maqāṣid Al-Shariah Theory As a Method of The Development of Islamic Laws and Shariah Economics," *Justicia Islamica* 16, no. 2 (2019): 247–68, <https://doi.org/10.21154/justicia.v16i2.1666>.

⁶⁰ Baidhowi and Andry Setiawan, "Harmonization of Islamic Law Norms in Sharia Banking Laws," in *Proceedings of the 2nd International Conference on Indonesian Legal Studies (ICILS 2019)* (Atlantis Press, n.d.), 225–31, <https://doi.org/10.2991/icils-19.2019.39>.

⁶¹ Al-Arabi, *Al-Masalik Fi Syarh Muwatta Malik*, 22.

⁶² Fathullah Asni, "Management of Standardisation on the Practice of Contract in Malaysia: An Analysis According to Usul Al-Fiqh and Mura'ah Al-Khilaf Method," *Qualitative Research in Financial Markets* 13, no. 1 (January 1, 2021): 118–39, <https://doi.org/10.1108/QRFM-07-2019-0084>.

to bridge the gap so that the *muamalah* problems of both types (dynamic and static) are addressed wisely. In an effort not to fall into the trap of usury, Ibn al-Arabi through his rules paid attention to the concept of *sadd al-zariah*, namely as a preventive effort. Likewise, through the rules of the *maqasid al-shariah* concept, in order to understand the wisdom of every order and prohibition contained therein, Ibn al-Arabi was very wise in trying to combine the concepts of *sadd al-zariah* and *maqasid al-shariah* in order to achieve benefit.⁶³

As mentioned, the rules of *fiqh* are included in the logic of inductive thinking, so the problem of contemporary *muamalah maliah* that develops in a society where there are no explicit provisions directly in the texts of the Qur'an and hadith can be solved through the *fiqh* rules of akad *ba'i* put forward by Ibn al-Arabi. The relevance of the *fiqh* principles of the *ba'i* Ibnu al-Arabi contract can be understood more clearly from examples of the application of these rules in contemporary *muamalah* issues.

Rules 1,2,3,4 are the legal maxims about usury. An example of its application is that recently, a number of companies have provided cashback to consumers/subscribers (buyers). Regarding cashback, it is not an issue as long as it does not contain elements of usury, such as the motive/modus for giving interest loans. Likewise, the cashback received by the buyer occurs because of the debts required at the beginning, so it becomes usury.

Rules 1, 2, 8, 9 are the legal maxims about *garar/jahalah*. For example, in buying and selling online via an application, there is a buying and selling system through drop shippers. The law of buying and selling is permissible on condition that the drop shipper and the supplier explain the object of the goods along with the price in order to avoid obscurity (*garar*), which is prohibited in Islamic jurisprudence. Another example is the Multi-Level Marketing (MLM) sales system, whose motive is a money game.

The second rule is the legal maxim about consuming wealth in vanity. For example, buying and selling stocks is permitted as long as the objects

⁶³ Al-Arabi, *Al-Masalik Fi Syarh Muwatta Malik*, 22.

being traded include those that are lawful to be traded. If the object is related to prohibited goods such as drugs and others, it is legal because it is included in trading and consuming in a vanity way.

The fifth rule is the legal maxim about *urf*. For example, buying and selling using the pre-order (PO) system is permitted as long as it fulfills the pillars and conditions stipulated in the sale and purchase of *salam*, such as the object of the goods is *halal* and the specifications are clear. One thing, according to custom, the selling mechanism is that the goods are first transferred to the seller according to the price of the goods and then sent to the buyer's address. After the seller buys the goods ordered from the supplier, the seller sends the goods to the buyer. Buying and selling practice is permissible based on *urf* as buying and selling greetings (*ba'i al-salam*).

The sixth rule is the legal maxim about *gasyi*. For example, buying and selling online is permissible as long as it fulfills the pillars and conditions. However, the risks experienced today include the potential for fraud related to goods that do not conform to specifications, such as pirated goods. It is prohibited because it is included in buying and selling that contains fraud (*ba'i al-gasyi*). Another example is a sales system with a money game motive.

The seventh rule is the legal maxim regarding needs and emergencies. For example, in accordance with the times nowadays, it is easier and faster for us to make transactions, such as non-cash transactions or electronic transactions (e-money) for toll services (toll cards) initially paid in cash. It is permissible in order to meet the needs that occupy an emergency position in Islamic jurisprudence.

The tenth rule is the legal maxim regarding *maqasid al-syariah* and *sadd al-zariah*. For example, buying and selling stocks with the motive of investing in the future as long as it fulfills the pillars and conditions is permissible because it relates to the business of maintaining assets (*hifz al-mal*), which is one of the objectives set out in Islamic law (*maqasid al-syariah*). As for the *sadd al-zariah* rule, for example, the prohibition of

Multi-Level Marketing (MLM) contains money games. Oni Sahroni explained the purpose of MLM by giving bonuses for recruiting members to join. In other words, the bonus is not from product sales, or the sold products are just camouflaged or not of good quality.⁶⁴ In addition to being banned because of *garar/jahalah*, the motive for this MLM system is that game money is also forbidden because it is based on the concept of *sadd al-zariah* to close roads to avoid fraudulent practices.

Conclusion

The ten principles of the *fiqh* rules of akad bai from Ibn al-Arabi in his work "Al-Masalik fi Syarh Muwatta Malik" are complementary both in theory and practice. The rules of *Ba'i* al-Arabi's *fiqh* contract are different from the rules of other *fiqh* jurists because they are more complete and simultaneously have two characteristics, namely static and dynamic. The research results show that the unity of Ibn al-Arabi's ten principles of *fiqh* regarding *ba'i* contracts is very relevant to today's *muamalah maliah* contracts, for example, the cashback system, the drop ship system in online buying and selling, and stock sales, pre-order systems, and electronic transactions (e-money), so that they can be used as legal reasons (*'illat*) if problems arise in contract practices. Future research should discuss one of the *muamalah maliah* contracts practically and specifically by using comparative analysis between the ten rules of al-Arabi *fiqh* akad *ba'i* and the other rule *fiqh* to complement and strengthen the research results.

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⁶⁴ Oni Sahroni, *Fikih Muamalah Kontemporer*, ed. Syahrudin El-Fikri, Cet-2 (Jakarta: Republika, 2019), 135–36.

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